IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1550 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Nilima Sanglikar for the appellants.

Mr. Zavier for the Corporation.

CORAM: S.B. DESHMUKH, J.
September 14, 2006.

P.C. :

1. Heard the learned counsel for the parties.

2. The learned counsel for the parties have invited my attention to the order passed by this court in F.A.No.1551 of 2006, passed on 8.8.2006 (Coram: A.S.Oka, J) The L.C.Suit No. 6713 of 2001, was filed by the present appellant / plaintiff who was plaintiff in L.C.S.No. 6713 of 2001, before the trial court. The appellant/respondentt in that suit had received 24 hours notice for demolition of the alleged unauthorised structure dated 22.12.2005. The judgment and decree passed by the trial court in L.C.S.No.6713 of 2001 was subject matter of the First Appeal No. 1551

of 2006. This court, quashed and set aside the judgment, passed by the trial court in L.C.S.No.6713 of 2001 and remanded the suit back to the trial court for decision according to the directions given in the judgment of F.A.No.1551 of 2006.

3. This present appeal NO. 1550 of 2006 is arising out of the judgment and order passed by the trial court in L.C.S.No.3518 of 1996. In this L.C.S.NO.3518 of 1996, notice served to the appellant / plaintiff by the Corporation under Section 351 dated February 4, 1995 is challenged. L.C.S.No.3518 of 1996 is dismissed by the trial court.

4. From the record, it is clear that L.C.S. NO.3518 of 1996 and L.C.S. NO.6713 of 2001, were considered and dismissed and disposed off by the

common judgment of the trial court dated April 7, 2006. As noted above, F.A.No.1551 of 2006,is allowed and L.C.S.No. 6713 of 2001 is remanded to the trial court by this court. Undisputedly the learned counsel for the parties, admit tha structure in both the suits i.e. L.C.S.No.3518 of 1996 and 6713 of 2001 is one and the same. Now the L.C.S.No. 6713 of 2001 is pending before the trial court after remand by this court.

5. In this view of the matter, this appeal needs to be disposed off by remanding back L.C.S.No. 3518 of 1996 to the trial court, for hearing of the said suit alongwith L.C.S.NO. 6713 of 2001.

6. The learned counsel for the appellant seeks liberty to file an application for amendment. After

hearing the learned counsel for the Corporation, I feel that such liberty can be granted in favour of the applicant for filing an application seeking amendment.. If such application is filed by the present appellant / plaintiff in L.C.S.NO. 3518 of 1996, the learned trial court after giving an opportunity to the respondent corporation shall decide the said application in accordance with the provisions of law.

7. In this view of the matter, the appeal is partly allowed. The judgment and order passed by the Trial court in L.C.S.No. 3518 of 1996 is quashed and set aside and L.C.S. No. 3518 of 1996 is remanded for disposal to the trial court alongwith L.C.S.NO. 6713 of 2001.

8. All the contentions of all the

parties are left open to be agitated before the trial court. The trial court, shall decide and dispose off L.C.S.No.3518 of 1996 alongwith L.C.S.No. 6713 of 2001, in accordance with the directions given in F.A.No. 1551 of 2006. No costs.

9. Parties to appear before the trial court on 20.9.2006.

. Parties to act on authenticated copy of this order. Authenticated copy be given to the parties as per usual practice.

sd/-

(JUDGE)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1551 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders	Court's or Judge's Orders

Nilima Sanglikar for the appellants.

Mr. J.J. Xavier for the Corporation.

CORAM: S.B. DESHMUKH, J.
September 14, 2006.

P.C. :

1. Heard the learned counsel for the parties.

2. This appeal is heard and disposed off by this court (Coram: A.S.Oka, J) on 8.8.2006. The learned counsel for the parties, admit, that L.C.S.No.6713 of 2001 was not on the cause-list of the trial court on 5.9.2006. Advocate Mr. Zavier for

the Corporation, submits, that therefore Written Statement could not be filed as directed by this court in L.C.S.No. 6713 of 2001 on 5.9.2006. Today this F.A. No. 1551 of 2006 was directed to be tagged alongwith F.A. No. 1550 of 2006 which was listed for admission. Mr. Zavier for the Corporation seeks two weeks time for filing of the written statement. After hearing the learned counsel for the appellant, request made on behalf of the Corporation is accepted. The time frame given by the court earlier on August 8, 2006 shall remain as it is except the extension of two weeks time for filing of the Written Statement on

behalf of the Corporation as on today. This order is passed on the oral application made by Mr. Zavier for the Corporation.

3. Parties to appear before the trial court on 20.9.2006.

. Parties to act on authenticated copy of this order. Authenticated copy be given to the parties as per usual practice.

sd/-

(JUDGE)